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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARC ANDRE EDWARDS,

Defendant and Appellant.

B305331

(Los Angeles County
Super. Ct. No. YA091481)

APPEAL from a judgment of the Superior Court of Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Christopher J. Bou Saeed, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Steven D. Matthews and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

In Marc Andre Edwards’s direct appeal of his convictions for willful, deliberate, and premeditated attempted murder, discharge of a firearm at an occupied motor vehicle, and possession of a firearm by a felon, we vacated his sentence and remanded the matter for the trial court to hold a new sentencing hearing to consider whether to exercise its discretion under Penal Code section 12022.53, subdivision (h)¹ to strike or dismiss an enhancement otherwise required by section 12022.53.² (*People v. Edwards* (May 30, 2018, B284206) [nonpub. opn.], pp. 14-15.) Edwards now appeals from the judgment entered after the resentencing hearing, contending the trial court abused its discretion by failing to consider factors enumerated in California Rules of Court, rule 4.428 when it reimposed the 20-year firearm enhancement under section 12022.53, subdivision (c). Rejecting Edwards’s contention, we affirm.

BACKGROUND

I. Trial and Verdicts

The following facts are taken from our opinion in Edwards’s direct appeal of his convictions:

“Evidence presented at trial demonstrated the following facts.

“On October 26, 2014, about 3:45 a.m., victim Natalia Sua was driving with two passengers in the back seat when her pickup truck was struck by a Cadillac that ran a stop sign. One of Sua’s passengers heard an occupant of the Cadillac say to someone in a Mercedes driving behind the Cadillac something

¹ Further statutory references are to the Penal Code.

² Effective January 1, 2018, while Edwards’s direct appeal was pending, section 12022.53 was amended to add subdivision (h). (Stats. 2017, ch. 682, § 2.)

‘about getting a gun.’ The driver of the Cadillac was later identified as Brandon Frisen, a member of the Nutty Blocc Compton Crips. The driver of the Mercedes was later identified as defendant Edwards, a member of the Front Hood Compton Crips, a criminal street gang allied with Frisen’s gang.

“After the collision, Sua’s vehicle eventually came to a stop at a different intersection. A sheriff’s deputy on patrol observed the Mercedes pull up next to the passenger side of Sua’s vehicle, and then the deputy heard multiple gunshots. Bullets struck the front and rear passenger side doors, a passenger side window, and the front windshield of Sua’s vehicle. The passenger side window shattered. Sua and her passengers ducked to avoid the gunshots. No one was struck.

“The sheriff’s deputy located the Mercedes, which had crashed. He observed Edwards crouching down in front of the car, appearing to conceal something. The deputy detained Edwards and recovered a .45 caliber handgun on the ground next to the front passenger side tire. A criminalist later determined that seven cartridge casings recovered from the scene of the shooting were fired from that handgun. Edwards tested positive for gunshot residue and his DNA was found on the trigger and trigger guard of the handgun.

“At trial, the parties stipulated that Edwards was previously convicted of a qualifying felony supporting the charge of possession of a firearm by a felon.

“The jury found Edwards guilty of the attempted murder of Sua (§§ 187, subd. (a) & 664; count 2), and found true the allegation that the attempted murder was willful, deliberate and premeditated. The jury also found Edwards guilty of shooting at an occupied motor vehicle (§ 246; count 5) and possession of a

firearm by a felon (§ 29800, subd. (a)(1); count 6). The jury further found true the allegations that Edwards committed the crimes in counts 2 and 5 for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b))^[3] and that he personally and intentionally discharged a firearm in the commission of the crimes in counts 2 and 5 (§ 12022.53, subds. (b), (c) & (e)(1)).^[4]” (*People v. Edwards, supra*, B284206, pp. 2-4.)

II. Initial Sentencing Hearing and Direct Appeal

At the initial sentencing hearing on July 18, 2017, the trial court sentenced Edwards to 48 years to life in prison: a life term for the attempted murder in count 2, plus 20 years for the personal and intentional discharge of a firearm (§ 12022.53, subds. (c), and 10 years for the gang enhancement (§ 186.22, subd. (b)(1)(C)); a consecutive term of 15 years to life for shooting at an occupied motor vehicle in count 5, based on the gang enhancement (§ 186.22, subd. (b)(4)); and a consecutive term of three years (the upper term) for possession of a firearm by a felon in count 6.

In exercising its discretion to impose the upper term on count 6, the trial court stated:

³ “Because Edwards does not challenge the sufficiency of the evidence supporting the true findings on the gang enhancement allegations, we do not summarize that evidence here.”

⁴ “The jury was unable to reach a unanimous verdict on counts 1 and 3, which alleged the attempted murders of Sua’s passengers. The trial court declared a mistrial as to these counts and subsequently dismissed them pursuant to section 1385. The information does not contain a count 4.”

“The Court does find the following factors in mitigation:

“Mr. Edwards’ youth in this case. He was, I think, 18 at the time of this incident. He is a very young man. He was working and had a productive job at the restaurant that he was assistant manager at. I find those factors in mitigation.

“I do find factors in aggravation, that he has priors, that in this case, in his history, where this case, demonstrates a continuing and increasing seriousness and dangerousness of the crimes that he has committed in this matter.

“The victims in this case were particularly vulnerable, in that they were in a vehicle, side by side, almost trapped in a vehicle which had been involved in a collision with counterparts or associates of Mr. Edwards.

“He has engaged in violent conduct that indicates very dangerous and serious danger to society in this case.

“The Court in this case is going to find that the factors in aggravation outweigh the factors in mitigation.”

Edwards appealed, contending, among other things, that he was entitled to a new sentencing hearing in light of Senate Bill No. 620, which amended section 12022.53 to give trial courts discretion to strike certain firearm enhancements. (*People v. Edwards, supra*, B284206, p. 2.) We vacated his sentence and remanded the matter for the trial court to hold a new sentencing hearing to consider whether to exercise its discretion under newly added section 12022.53, subdivision (h) to strike or dismiss an enhancement otherwise required by section 12022.53. (*Id.* at pp. 14-15.)⁵

⁵ In the same appeal, the parties agreed the trial court erred in imposing the 10-year gang enhancement under section 186.22, subdivision (b)(1)(C) on the attempted murder count, and

III. Resentencing Hearing

At the resentencing hearing on February 13, 2020, defense counsel asked the trial court to exercise its discretion to strike or stay the 20-year firearm enhancement (§ 12022.53, subd. (c)) because Edwards was only 18 years old,⁶ and he was an assistant manager, when he committed the crimes. Defense counsel also asserted Edwards “had a troubled childhood as documented by the documents in mitigation,” which were submitted in advance of the initial sentencing hearing.

In declining to exercise its discretion to strike the 20-year firearm enhancement, the trial court stated:

“The Court in this matter adopts all of its previous findings and statements that were made at the sentencing hearing on July 18, 2017. I’m not going to repeat them.

“This is a particularly heinous crime. I think at the time of appeal the Attorney General went through the record and detailed my statements at the time of the sentence in this case, and I recall the facts of this case very well.

“I’m troubled that Mr. Edwards was 18 at the time of the incident; that it was a tragedy that he has wasted his life. And I took into consideration the youthful factors and what was happening in his life up to that point and the factors of

the trial court should have imposed the 15-year minimum parole eligibility date under section 186.22, subdivision (b)(5) instead. (*People v. Edwards, supra*, B284206, pp. 10-11.) We ordered the trial court to make this correction on remand. (*Id.* at pp. 14-15.)

⁶ Documents in the record, including the Information, indicate Edwards was 19 years old when he committed the crimes.

mitigation. However, as I've noted, the factors in aggravation far outweighed those factors in mitigation.

"I've considered the direction of the Court of Appeal. I recognize my discretion to strike the enhancement under 12022.53, but I do believe to do so would be an abuse of my discretion. It would be against the interest of justice to do so. The lives affected by Mr. Edwards are forever marked on behalf of his victims. And, but for the grace of God, Mr. Edwards was spared and the victims were spared in this case that they survived the shooting. So the request to strike the enhancement under 12022.53 is denied; the Court having previously incorporated all of its previous findings and statements in this matter."

The trial court imposed the same sentence it imposed at the initial sentencing hearing on July 18, 2017 (including the 20-year firearm enhancement under section 12022.53, subdivision (c) on count 2 for attempted murder), except that the court imposed a 15-year minimum parole eligibility date under section 186.22, subdivision (b)(5) on count 2 (instead of the 10-year gang enhancement under section 186.22, subdivision (b)(1)(C)), pursuant to our directive. Thus, Edwards's sentence is now 38 years to life (instead of the initial sentence of 48 years to life).

DISCUSSION

Any "person who, in the commission of a felony specified in subdivision (a) [including attempted murder], personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years." (§ 12022.53, subd. (c).) "Senate Bill No. 620, which added section 12022.53, subdivision (h), gave the trial court discretion 'in the interest of justice pursuant to Section

1385 and at the time of sentencing, [to] strike or dismiss an enhancement otherwise required to be imposed by this section.’ (§ 12022.53, subd. (h).)” (*People v. Pearson* (2019) 38 Cal.App.5th 112, 116 (*Pearson*).)

“ ‘ “A court’s discretionary decision to dismiss or to strike a sentencing allegation under section 1385 is” reviewable for abuse of discretion.’ [Citation.] ‘In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, “ [t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ ” [Citations.] Second, a “ ‘decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” ’ ” [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.’ ” (*Pearson, supra*, 38 Cal.App.5th at p. 116.)

Edwards contends the trial court abused its discretion in imposing the 20-year firearm enhancement under section 12022.53, subdivision (c) on count 2 for attempted murder because the court “overlooked” the factors enumerated in California Rules of Court, rule 4.428.⁷ This rule provides, in pertinent part: “If the court has discretion under section 1385(a) to strike an enhancement in the interests of justice, the court also

⁷ Undesignated rule references are to the California Rules of Court.

has the authority to strike the punishment for the enhancement under section 1385(c). In determining whether to strike the entire enhancement or only the punishment for the enhancement, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant's criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration." (Cal. Rules of Court, rule 4.428(b).) "Relevant factors enumerated in [the California Rules of Court] must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise." (Cal. Rules of Court, rule 4.409.)

The Attorney General argues that by failing to object below, Edwards forfeited his contention that the trial court "overlooked" the factors enumerated in rule 4.428. (See *People v. Scott* (1994) 9 Cal.4th 331, 356 ["In sum, we hold that complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal"].) Edwards did not file an appellate reply brief and did not respond to the Attorney General's forfeiture argument. We agree with the Attorney General's argument that Edwards's contention is forfeited on appeal. Edwards did not raise the factors enumerated in rule 4.428 in the trial court or ask the trial to address them on the record.

Even assuming Edwards had preserved his contention for review, we would conclude the trial court acted within its discretion in declining to strike the 20-year firearm enhancement set forth in section 12022.53, subdivision (c). There is nothing in the record affirmatively indicating the court failed to consider any relevant enumerated factor in the California Rules of Court

that it was required to consider. Thus, the court is deemed to have considered all relevant factors. (Cal Rules of Court, rule 4.409.) Moreover, the trial court's decision was not irrational or arbitrary, but rather, the product of the court's evaluation of mitigating and aggravating factors.⁸

Turning to the particular rule that is the focus of Edwards's contention of error, rule 4.428 states that a trial court may consider the factors enumerated in that rule (set forth above) "[i]n determining whether to strike the entire enhancement or only the punishment for the enhancement." (Cal. Rules of Court, rule 4.428(b).) Edwards does not argue the trial court failed to determine "whether to strike the entire enhancement or only the punishment for the enhancement," and the record does not affirmatively indicate otherwise. (*Ibid.*) Instead, he argues "the record does not reflect that the trial court considered" the specific factors enumerated in rule 4.428. There is no requirement that a trial court review these factors on the record, in determining whether to strike the enhancement or the punishment for the enhancement. As set forth above, the trial court is deemed to have considered all relevant factors absent an affirmative showing in the record otherwise. (Cal Rules of Court, rule 4.409.) Nothing in the record before us demonstrates error.

⁸ Edwards does not argue the trial court erred in its consideration of the mitigating and aggravating factors.

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.